

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

NORMAN H. GARLICK, #321732,

Petitioner,

v.

ACTION NO. 2:06cv360

GENE M. JOHNSON,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's probation violation hearing on October 30, 2002, as a result of which he lost good conduct credit.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on April 30, 2007 [Doc. No. 17], recommending the petition be denied in part and granted to the extent that it alleges a violation of petitioner's Fourteenth Amendment right to due process for the Virginia Department of Corrections' failure to grant him good conduct

allowances for his first 252 days served in city and regional jails before he was received in the state system.

By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On May 10, 2007, respondent filed Objections to the Report and Recommendation and Motion to Supplement Record. Petitioner filed Objections to the Report and Recommendation on May 14, 2007, and filed a response to respondent's objections and motion to supplement the record on May 18, 2007.

On June 13, 2007, the Court entered an order re-referring the case to the Magistrate Judge for further consideration of the issues raised in Respondent's Objections to the Report and Recommendation and Motion to Supplement Record and subsequent filings. By order entered June 15, 2007, the Court granted respondent's motion to supplement the record, and ordered respondent to provide evidence demonstrating when and by what means or method petitioner's good conduct credit was factored into his time calculation. Respondent filed a response to the order on July 5, 2007, with a supplemental affidavit in support. On July 17, 2007, petitioner filed a response to the order.

On August 1, 2007, a Second Report and Recommendation [Doc. No. 26] was filed recommending the entire petition be dismissed. The Court has received no objections to the United States Magistrate Judge's Second Report and Recommendation and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the second report of the United States Magistrate Judge filed August 1, 2007, and it is therefore ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent.

Petitioner's equal protection claim raised under Ground (a) is DENIED because petitioner failed to prove that he was subjected to disparate treatment as a result of intentional or purposeful discrimination. To the extent Ground (a) alleges a violation of petitioner's Fourteenth Amendment right to due process, it is DENIED because his state-created right to have the opportunity to earn good conduct credit was not deprived.

To the extent petitioner claimed his Fourteenth Amendment right to equal protection was violated in Ground (b), the claim is DENIED because petitioner has not alleged that he has been treated differently than others with whom he is similarly situated. To the extent petitioner claims in Ground (b) that his Fourteenth Amendment right to due process was denied, the claim is DENIED because petitioner was afforded the process to which he was entitled.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

_____/s/Rebecca Beach Smith

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 31, 2007